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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEVADA**

PETER DELVECCHIA, *et al.*,

Plaintiffs,

vs.

FRONTIER AIRLINES, INC., *et al.*,

Defendants.

**Case No: 2:19-CV-01322-KJD-DJA**

**SECOND DECLARATION OF  
JOHN D. McKAY IN SUPPORT OF  
PLAINTIFFS' MOTION  
TO EXCEED PAGE LIMITS**

I, John D. McKay, hereby make this Declaration pursuant to 28 U.S.C. §1746:

1. I am counsel for Plaintiffs in this action, along with Margaret McLetchie and Leo Wolpert.
2. Since the date of my first Declaration in support of Plaintiffs' Motion, the full team of Plaintiffs' counsel (including Mr. Wolpert, who entered his appearance on November 20)

2D DECLARATION OF JOHN D. McKAY ISO MOTION TO EXCEED PAGE LIMITS

1 has been working diligently to edit Plaintiffs' Response from an original 67 pages down to  
2 approximately 51.

- 3 3. The full team of counsel was not available until November 16 due to unforeseen  
4 circumstances including two illnesses and a parent who required emergency surgery out of  
5 town.
- 6 4. Defendants make a point of noting in their Response that Plaintiffs' request for an  
7 extension of time, to which Defendants have now conditionally agreed, was not made  
8 until November 16. That was unavoidable due to the above-noted emergent  
9 circumstances.
- 10 5. At 10:27 a.m. on November 16, Ms. McLatchie sent an email to defense counsel Brian  
11 Maye (a partner in his firm), Eric Cunningham (also a partner), and Richard Harris (an  
12 associate), that read: "Good morning. I have been in and out of the office with unexpected  
13 illnesses and my husband / colleague is in Tucson helping his father recover from surgery.  
14 Would you be willing to stipulate to a two-week extension of today's deadline?"
- 15 6. After no response was received nearly 90 minutes later, I sent a text message to Mr.  
16 Maye's cell phone stating: "Hi Brian, Maggie emailed you about extending today's  
17 deadline by 2 weeks but hasn't heard back. Will you agree to that so we can get a stip  
18 filed?" Although Mr. Maye has represented that he was on vacation in the Bahamas that  
19 day, a "Delivered" receipt was attached to that text. Mr. Maye did not respond.
- 20 7. I live part time overseas and always receive text messages on my iPhone in a timely  
21 manner when I am there.
- 22 8. At approximately the same time, I placed calls to Messrs. Cunningham and Harris but the  
23 calls were not answered.
- 24 9. An hour later, at 1:06 p.m., I sent a follow-up text to Mr. Maye that said simply, "Brian?"  
25 Again, iMessage indicated that the text was "Delivered." Again, Mr. Maye did not  
26 respond.
- 27 10. At 1:38 p.m. I sent an email to Messrs. Maye, Cunningham and Harris, and Mr. Michalek,  
28 Defendants' local counsel, stating, in part: "I sincerely hope that at least one of you will

1 have the professional courtesy to respond to us before the end of business today, so that  
2 we can file a stipulation or unopposed motion rather than wasting the Court's time with  
3 something as unnecessary as a contested motion for extension (the week before  
4 Thanksgiving, no less).”<sup>1</sup>

5 11. I included in the same email: “As background, I have been unable to reach Maggie for  
6 assistance with the response for the past three weeks. She contacted me today and  
7 explained that she has been out of her office with an illness and her husband and colleague  
8 has been out of town during the same period assisting his father with a serious illness that  
9 required surgery, essentially leaving their office unstaffed. I have spent the past 3 weeks  
10 doing little else than poring through the transcripts of the 42 depositions and thousands of  
11 documents in this case and writing the response brief. Although I was prepared to file it  
12 sometime prior to midnight tonight, Maggie is now back at her desk and has requested the  
13 additional time to read my draft and edit it as she feels necessary, which is certainly an  
14 appropriate request since it will be filed with her name on it as well as mine. Also, she has  
15 raised an excellent point that our two offices will need to coordinate on the filing of  
16 several exhibits under seal, since their markings--made principally by your office--identify  
17 them as being covered by two different Protective Orders entered in this case. Quite  
18 frankly, I have not had a chance to give that issue a great deal of thought given my work  
19 load these past several weeks. She is correct. We need to ensure that all of the Court's  
20 requirements under the two Protective Orders and its Local Rules are followed. This is not  
21 a logistically simple case by any stretch of the imagination.”

22 12. I received no response from Mr. Maye, Mr. Cunningham, Mr. Harris or Mr. Michalek.

23 13. At 1:58 p.m., I called Mr. Gosewisch, a partner in Mr. Maye’s firm, who is one of the six  
24 attorneys listed as counsel of record for all Defendants (that list includes Ms. Shelke, who  
25 I understand no longer works at the firm), and I was able to reach him. I explained the  
26 circumstances and made the same request that Ms. McLetchie had. Mr. Gosewisch said

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28 <sup>1</sup> In my haste, I inadvertently sent the email to Ms. McLetchie with ccs to defense counsel, but the  
text of the email opened, “Dear Brian, Eric and Richard.”

1 only that he did not want to be involved in the case anymore and wished that someone  
2 would take him off it. He refused to comment on the request but said that he would ask  
3 one of his colleagues to respond.

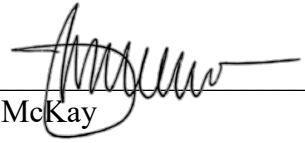
4 14. Four minutes after that 1-minute call ended, Mr. Harris sent an email response that stated:

5 “Sorry—Just seeing this. Brian is away on vacation this week. We do not stipulate to an  
6 extension and lack authority to agree to this last-minute request, as the dispositive motion  
7 deadlines have been in place for several months and were known to both [*sic*] parties.”

8 15. Footnote 1 to Defendants’ Response states: “In seeking an extension of time to file their  
9 response to Defendants’ Motion for Summary Judgment, Plaintiffs never notified  
10 Defendants that they intended to seek an expansion of the page limit.” ECF No. 276 at 2  
11 & n.1. As noted in the previous paragraphs, defense counsel never granted Plaintiffs’  
12 counsel an opportunity to discuss the matter. Had they been willing to talk, I would  
13 certainly have mentioned that one of the reasons we needed the extension was to file a  
14 motion for leave to exceed the page limit, since on that date the mere statement of relevant  
15 facts consumed 35 pages of the 30-page brief limit (we have since edited it down to 25  
16 pages).

17 I declare under penalty of perjury that the foregoing is true and correct.

18 Executed on November 28, 2023.

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22 John D. McKay  
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